

Restraints of Trade

Harminder Sandhu, Managing Partner and Head of Litigation at Hawkins Hatton considers how to protect against the risks associated with key employees leaving to join a competitor.

We have seen a number of claims recently where our business clients have been forced to take action against competitors who have engaged employees subject to a restraint of trade. If a competitor is aware a new employee is subject to a restraint of trade and employs the employee to work in a role which would lead to breach of that restraint, the competitor could face an action. An injunction can be sought to avoid the employee continuing to work for the competitor during the period of the restraint clause and/or damages for losses sustained (i.e. if customers have been poached). In order to enforce a restraint of trade clause it is important to act quickly to prevent the use of confidential information and to preserve evidence of the breach. Any court proceedings for injunctive relief will require clear evidence substantiating that a legitimate business interest is likely to be compromised. A restraint of trade does not protect a business against ordinary competition. When deciding whether to enforce a restraint of trade against a former employee the Courts will usually have regard to a number of factors including:-

1. Geographical scope of restraint – this must be no wider than is reasonably necessary to protect the business' legitimate interests.
2. Duration of the restraint – for senior and influential employees a period of up to 12 months might be reasonable, what is deemed reasonable is subject to the circumstances of the business and role in question.
3. Impact enforcement would have on the former employee's ability to earn a living.

A restraint of trade clause must be carefully drafted to suit the needs of the business and the role of the employee in question. Generally a restraint of trade clause will seek to prevent an employee from:-

- a) Competing with a former employer;
- b) Dealing with a former employer's contacts, customers, suppliers etc;
- c) Soliciting a former employer's clients, customers, suppliers and employees;
- d) Using confidential information.

Restraint of trade clauses must be justified and reasonable in scope to be enforceable. Hence to achieve full protection advice should be sought at the outset of employment for each employee. We can also assist with enforcement action if a departing employee is acting in breach of their post termination restrictions.

For further information or advice on restraints of trade or dispute resolution, contact Harminder Sandhu on 01384 216840 or hsandhu@hawkinshatton.co